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February 7, 2006

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The Honorable Michael O. Leavitt
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Mr. Secretary:

The ABRWH continues to have concerns about the legal advice from the Department of Justice Office of Legal Counsel regarding the procedures for the utilization of classified or restricted information for the qualification of claimants for the Special Exposure Cohort under the EEOICPA program. The Board was first made aware of this ruling in April 2005, and at that time, we wrote you a letter expressing our concerns and requesting additional information and clarification on this matter. At our Board meeting on January 25, 2006, we were again briefed about this issue.

The Board is concerned about the possible implications of this legal advice on our ability to review SEC petitions in a matter compatible with the original legislation and the ensuing regulations governing this program. While the Board is fully supportive of the need for preventing the release of classified or restricted information and recognizes the necessary use of this type of information in DOE nuclear programs, the Board also recognizes the critical importance of transparency to the EEOICPA program. Due to the long history of secrecy at DOE nuclear facilities, former workers are very suspicious of secrecy related to any health-related information used as the basis for their claims.

Although having Board members with appropriate security clearances review any classified or restricted material necessary for SEC evaluation may allow the Board to utilize such information in our deliberations, that use would not be transparent to the petitioners and other interested parties. The Board is concerned that such procedures could undermine the credibility of our recommendations.

The Board respectfully requests a copy of any written legal advice specific to this matter and a briefing by someone knowledgeable about the basis for this determination. This would assist the Board in attempting to address this legal advice while maintaining a process that is consistent with the original intent of the EEOICPA legislation.

Sincerely,

Paul L. Ziemer, Ph.D.
Chairman